

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ABEL MIGUEL, et al.,	:	CIVIL ACTION NO. 09-6167 (MLC)
	:	
Plaintiffs,	:	O P I N I O N
	:	
v.	:	
	:	
GARY LOCKE, et al.,	:	
	:	
Defendants.	:	
_____	:	

THE PLAINTIFFS brought this action to challenge a rule issued under the Atlantic Sea Scallop Fishery Management Plan ("Second Action"). (Dkt. entry no. 6, 2d Am. Compl.) The Court entered an order on March 29, 2010, staying and administratively terminating the Second Action on the ground that the Second Action concerns claims that are duplicative of the claims brought in General Category Scallop Fishermen v. Locke, No. 08-2264 (MLC) ("First Action"). (Dkt. entry no. 15, 3-29-10 Order.) The Court granted the Plaintiffs leave to move to reopen the Second Action within twenty days of entry of a final disposition in the First Action. (Id. at 3.)

THE COURT granted summary judgment in favor of the defendants in the First Action on April 14, 2010, and ordered the case closed. (No. 08-2264, dkt. entry no. 43, 4-14-10 Mem. Op.; dkt. entry no. 44, 4-14-10 Order & J.) The Plaintiffs then moved on April 27, 2010, to reopen the Second Action. (Dkt. entry no.

16, Mot. to Reopen.) The Court denied without prejudice the motion to reopen the Second Action on the grounds that the plaintiffs' appeal in the First Action was pending before the United States Court of Appeals for the Third Circuit ("Court of Appeals"), and further ordered that (1) the Plaintiffs should move to reopen the Second Action within 20 days of a resolution of the appeal in the First Action, and (2) if the Plaintiffs did not either move to reopen the Second Action within that time, or advise the Court that the plaintiffs were seeking certiorari to the Supreme Court of the United States within 90 days of the resolution of the appeal in the First Action, then the Court would dismiss the Second Action with prejudice as withdrawn. (Dkt. entry no. 18, 7-8-10 Order.)

THE COURT OF APPEALS issued an opinion on March 16, 2011, affirming this Court's grant of summary judgment in favor of the defendants in the First Action. See General Category Scallop Fishermen v. Locke, 635 F.3d 106 (3d Cir. 2011). The Court of Appeals denied the plaintiffs' request for a rehearing en banc on April 28, 2011.

THE DEFENDANTS now request that the Court dismiss the Second Action with prejudice, pursuant to the 7-8-10 Order. (Dkt. entry no. 19, Notice That Conditions By Which This Case Will Be Dismissed With Prejudice Have Been Met.) The Defendants observe that the Plaintiffs have taken no action in the Second Action

since before the resolution of the appeal in the First Action, and the time for doing so has now elapsed. (Id.)

THE COURT finds that the Plaintiffs have not complied with the instructions of the 7-8-10 Order in the time allowed. Furthermore, dismissal of the action for lack of prosecution is required by Local Civil Rule 41.1, which states that "[c]ivil cases . . . which have been pending in the Court for more than 120 days without any proceedings having been taken therein must be dismissed for lack of prosecution." For good cause appearing, the Court will grant the Defendants' request. The Court will issue an Order and Judgment separately.

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge

Dated: November 15, 2011